IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 2257 of 2006
With
CRIMINAL APPEAL No. 2 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the civil judge?

CRIMINAL APPEAL No.2257 of 2006

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VINODKUMAR NATHALAL PARMAR AND OTHERS
Versus
THE STATE OF GUJARAT

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Appearance :
MR MAHENDRA K PATEL for the Appellants
MR HL JANI, ADDITIONAL PUBLIC PROSECUTOR for the Opponent

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CRIMINAL APPEAL No.2 of 2007

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KANCHANBEN DIPABHAI AND ANOTHER
Versus
THE STATE OF GUJARAT

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Appearance :
MR DA SURANI for the Appellants
MR HL JANI, ADDITIONAL PUBLIC PROSECUTOR for the Opponent

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 07/02/2007

ORAL JUDGMENT

1. Criminal Appeal No.2257 of 2006 is filed by three appellants – original accused in Sessions Case No.34 of 2006. These appellants are convicted for offence under Sections 323, 324, 354, 504, 506(2), 114 of the Indian Penal Code ("IPC", for short) and Section 135 of the Bombay Police Act by the learned Additional Sessions Judge, Fast Track Court No.2, Surendranagar.

The learned Additional Sessions Judge was pleased to order that all the appellants shall undergo 1 year's R.I., fine of Rs.250/- (each) and in default, 3 months R.I. for offence under Section 323 read with Section 114 of IPC.

For offence under Section 324 read with Section 114 of IPC, the learned Additional Sessions Judge was pleased to award 2 years R.I., fine of Rs.250/- (each) and in default, 3 months R.I. to all the appellants.

To accused No.1, for offence under Section 354 of IPC, the learned Additional Sessions Judge was pleased to award 2 years R.I., fine of Rs.500/- and in default, 3 months R.I., for offence under Section 504 of IPC, 2 years R.I., fine of Rs.500/- and in default, 3 months

R.I., for offence under Section 506(2) of IPC, 3 years R.I., fine of Rs.500/- and in default, 3 months R.I. and for offence under Section 135 of the Bombay Police Act, the learned Additional Sessions Judge was pleased to award 6 months S.I., fine of Rs.100/- and in default, 2 months S.I.

The learned Additional Sessions Judge was pleased to acquit accused Nos.2 and 3 of the offence under Sections 354, 504 and 506(2) of IPC and Section 135 of the Bombay Police Act.

The learned Additional Sessions Judge was pleased to order that all the sentences shall run concurrently and the accused should be given set of of the period, which they have undergone as under trial prisoners.

2. The judgment and order was pronounced on 17.11.2006. The learned Additional Sessions Judge was pleased to grant time to surrender up to 12.01.2007. Therafter, an application was moved seeking extension and the same was granted up to 24.01.2007 by order dated 16.01.2007.

On 24.01.2007, Criminal Misc.Application No.14196 of 2006 in Criminal Appeal No.2257 of 2006 was listed before this Court. Notice was issued returnable today, i.e. 07.02.2007. It was ordered that the petitioners shall

remain on bail till the next date of hearing, i.e. 07.02.2007 on the same conditions.

3. Criminal Appeal No.2 of 2007 is filed by two appellants – original accused in Special Case (Atrocity) No.30 of 2006. These appellants are convicted for offene under Sections 323 and 324 read with Section 114 of IPC and Section 135 of the Bombay Police Act by the learned Special Judge, Fast Track Court No.2, Surendranagar.

The learned Special Sessions Judge was pleased to award 1 year's R.I., fine of Rs.250 (each) and in default, 3 months R.I. for offence under Section 323 read with Section 114 of IPC.

For offence under Section 324 read with Section 114 of IPC, the learned Special Judge was pleased to award 2 years R.I., fine of Rs.250/- each and in default, 3 months R.I., whereas for offence under Section 135 of the Bombay Police Act, he was pleased to award 6 months S.I., fine of Rs.100/- (each) and in default, 2 months S.I.

The learned Special Judge was pleased to acquit the accused - appellants of the offence under Section 3(1)(10)(11)(14) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

4. The learned Advocates for the appellants in both the appeals jointly submitted that these are the appeals arising from the cross cases, i.e. Sessions Case No.34 of 2006 and Special Case (Atrocity) No.30 of 2006. The learned Advocates produced a copy of the pursis filed in Special Case (Atrocity) No.30 of 2006 before the learned Special Judge dated 17.11.2006.

The learned Special Judge did not entertain the same and noted in hit order that, 'as the compromise pursis is filed after the judgment was pronounced, the same be filed'.

5. All the parties are present before the Court, viz. appellants in Criminal Appeal No.2257 of 2006 and appellants in Criminal Appeal No.2 of 2007.

6. The learned Advocates submitted that all the offences, except offence under Section 506(2) of IPC are compoundable and therefore, it will be in the interest of justice, if permission to compound the offence is granted.

So far as offence under Section 506(2) of IPC is concerned, Mr.Mahendra K.Patel, learned Advocate for the appellants in Criminal Appeal No.2257 of 2006 submitted that ingredients of Section 506(2) of IPC are not

satisfied and proved by the prosecution.

Mr.Patel relied upon a decision of this Court in the matter of **MUNSUFKHAN YASINKHAN PATHAN VS. STATE OF GUJARAT** – Criminal Revision Application No.767 of 1991 decided on 03.08.1996 and submitted that unless it is proved by the prosecution that on account of the threat given by the accused, if the routine life of a person is intimidated, is not disturbed, then question of offence under Section 506(2) of IPC does not arise. He submitted that in the present case, there is nothing on the record to show that the daily routine of the person, who was intimidated was disturbed for a week or for that reason for any period.

7. The learned Advocate submitted that the conviction under Section 506(2) be quashed.

8. Heard Mr.H.L.Jani, learned Additional Public Prosecutor appearing for the opponent – State in both the appeals.

The learned Additional Public Prosecutor is not able to point out any material on the record of the case to justify the conviction under Section 506(2) of IPC. The learned Additional Public Prosecutor submitted that even if conviction under Section 506(2) is quashed, the

conviction under Section 506 of IPC be maintained.

9. Taking into consideration the submissions of both the parties, conviction under Section 506(2) of IPC is hereby quashed and set aside. However, as there is sufficient material, conviction under Section 506 of IPC is maintained.

10. In view of the fact that all the parties, present before the Court, are residing in the same village and reiterate what was submitted before the learned Additional Session/Special Judge by way of pursis, copy of which is produced and assure this Court that they will reside peacefully, it is deemed fit that permission to compound the offence is granted.

Appellant No.1 in Criminal Appeal No.2257 of 2006 – Vinodkumar Nathalal Parmar, present before the Court states that he is well qualified person and it is his misfortune that he is implicated in such an offence. He states that despite his qualifications, he is staying at village only with a view to see that he is able to be of some assistance to his aged parents.

Appellant No.2 – Bhartiben Vinodkumar Parmar, present before the Court states that she is wife of appellant No.1. She states that she is also educated up

to 10th standard. She is blessed with daughter, who is at present 3 years old.

11. Appellant No.1 in Criminal Appeal No.2 of 2007 – Kanchanben Dipabhai, present in the Court is also blessed with a child, who is hardly 6 months old.

12. All the appellants present in the Court reassure this Court in person that they will reside peacefully, that they have no surviving grievance against each other and it was a misfortune for them that the incident took place and they got implicated in the same. They will see that no incident of this nature takes place in future.

13. Taking into consideration the fact of compromise arrived at between the parties, which was placed before the learned Sessions Judge, but was filed, copy of which is taken on record, the offence is compounded. Conviction and sentence in each of the case is quashed and set aside. The appeals are allowed.

In view of the fact that the conviction and the sentence is quashed and set aside, fine paid by each of the appellants be refunded. Direct service is permitted.

(RAVI R.TRIPATHI, J.)

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